

WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 728-8000  
Facsimile: (212) 728-8111  
Todd G. Cosenza  
Paul V. Shalhoub  
Benjamin P. McCallen

ROLLIN BRASWELL FISHER LLC  
8350 East Crescent Parkway, Suite 100  
Greenwood Village, Colorado 80111  
Telephone: (303) 945-7415  
Facsimile: (303) 974-7468  
Michael A. Rollin

*Attorneys for Debtors*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	)Chapter 11 Case No.
	)
Lehman Brothers Holdings Inc., <u>et al.</u> ,	)08-13555 (SCC)
	)
Debtors.	)Jointly Administered
	)
	)
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**APPELLEES' COUNTER DESIGNATION  
OF ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND  
COUNTER STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, Appellees Lehman Brothers Holdings, Inc. and certain of its affiliates (collectively, "LBHI" or the "Plan Administrator") and Structured Asset Securities Corporation ("SASCO") (together, "Lehman," and collectively with their affiliated debtors in the above-captioned cases, the "Debtors") submit this *Counter Designation of Additional Items To Be Included in the Record on Appeal and*

*Counter Statement of Issues to be Presented on Appeal* (“Counter Designation”) in response to the *Appellants’ Designation of Record on Appeal and Statement of Issues to be Presented on Appeal* (“Appellant’s Designation”) of Appellants, U.S. Bank National Association, solely in its capacity as Indenture Trustee for Certain Mortgage-Backed Securities Trusts (“U.S. Bank”); Wilmington Trust Company and Wilmington Trust National Association, solely in their respective capacities as Trustee for Certain Mortgage-Backed Securities Trust (“Wilmington”); Law Debenture Trust Company of New York, solely in its capacity as Separate Trustee for Certain Mortgage-Backed Securities Trusts (“Law Debenture”); and Deutsche Bank National Trust Company, solely in its capacity as Trustee for Certain Mortgage-Backed Securities Trusts (“Deutsche” and collectively with U.S. Bank, Wilmington, and Law Debenture, the “RMBS Trustees” or “Appellants”).

Lehman designates the following additional items for inclusion in the record on appeal in the United States District Court for the Southern District of New York from the *Order Granting Debtors’ Motion to (A) Disallow And Expunge Certain RMBS Claims and (B) Release Certain Related Claims Reserves* [Docket Number 53163] (the “Expungement Order”), entered by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) in the above-captioned case on June 27, 2016.

**I. Counter Designation of Additional Items to Be Included  
In the Record on Appeal**

<b>Counter Designated Number</b>	<b>Date of Filing</b>	<b>Docket Number</b>	<b>Description</b>
1.	11/14/14	46962	Declaration of Franklin H. Top III, in Support of the RMBS Trustees’ (1) Reply in Support of the Estimation Motion and (2) Opposition to the Protocol Cross-Motion

2.	11/14/14	46963	Statement of the Litigation Subcommittee of the Official Committee of Unsecured Creditors in Support of Plan Administrator's (I) Objection to the Estimation Motion and the (II) Protocol Cross-Motion.
3.	12/3/14	47186	Declaration of William Alread in Support of LBHI's Reply Brief (A) In Opposition to the Estimation Motion and (B) In Further Support of the Protocol Cross-Motion.
4.	12/3/14	47187	Declaration of Craig Pino in Support of LBHI's Reply Brief (A) In Opposition to the Estimation Motion and (B) In Further Support of the Protocol Cross-Motion.
5.	12/3/14	47188	Declaration of William N. Goetzmann in Support of LBHI's Reply Brief (A) In Opposition to the Estimation Motion and (B) In Further Support of the Protocol Cross-Motion.
6.	12/8/14	47241	Letter from Todd G. Cosenza to Judge Chapman, dated December 8, 2014, In re: Matters Relating to the Estimation Motion and Protocol Cross-Motion and the December 10, 2014 Hearing
7.	12/8/14	47252	Letter from M. William Munno to Judge Chapman, dated December 8, 2014, in response to LBHI's December 8, 2014 Letter, In re: Matters Relating to the Estimation Motion and Protocol Cross-Motion and the December 10, 2014 Hearing
8.	12/9/14	47275	Declaration of James H. Aronoff in Support of the RMBS Trustees' Estimation Motion and in Opposition to the Protocol Cross-Motion

9.	5/31/16	52960	Debtor's Reply in Support of the Expungement Motion
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Lehman reserves the right to amend or supplement the above counter designation of items to be included in the record on appeal. Although Lehman has not objected to any of the documents designated by the Trustees on the basis that they were not considered by the Bankruptcy Court in interpreting the Protocol Order as part of the proceedings on the Expungement Order, should the Trustees seek to appeal on any basis aside from whether the Expungement Order was correctly decided, Lehman reserves the right to argue that these documents were improperly included in the record.

## **II. Counter Statement Of Issues To Be Presented On Appeal**

1. Given the deference accorded to the Bankruptcy Court's interpretation of its own Protocol Order, which was entered on December 29, 2014 and which the RMBS Trustees did not appeal, did the Bankruptcy Court properly disallow and expunge all RMBS Claims not submitted to the Protocol where the proceedings leading to the establishment of the RMBS Protocol and the statements and conduct of the parties and the Court during the sixteen months following entry of the Protocol Order indicate that it was intended that all claims be submitted into the Protocol?
2. Should this Court reverse the Bankruptcy Court's ruling that the reservation of rights language in its own Protocol Order indicates that the parties reserved their rights to seek to provide alternative methods of proof in support of the allowance or estimation of RMBS Claims properly submitted to the Protocol, and does not operate as an "opt-out" that permits the RMBS Trustees to avoid submitting claims to the Protocol?
3. Based on the RMBS Trustees' representations to the Bankruptcy Court in support of their Extension Motion that "the RMBS Trustees will not submit any additional RMBS Claims (for Covered Loans or otherwise) under the Protocol Order not already submitted pursuant to the Protocol Order by March 31, 2016 [and that] any such RMBS Claims shall be deemed waived and released by the RMBS Trustees and disallowed and expunged upon entry of the order granting the Motion," are the RMBS Trustees estopped from challenging the disallowance and expungement of all RMBS Claims that they did not submit to the Protocol?

Dated: August 4, 2016  
New York, New York

Respectfully Submitted,

By: /s/Todd G. Cosenza

Todd G. Cosenza  
Paul V. Shalhoub  
Benjamin P. McCallen  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 728-8000  
Facsimile: (212) 728-8111

Michael A. Rollin  
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